GUEST STATUTE

The Guest Status in Automobile Cases

The plaintiff was injured by the negligent driving of the defendant while returning from a fishing trip in the latter's car. The plaintiff had bought the gasoline for this particular trip in accordance with the custom followed by the parties whereby the recipient of the transportation furnished the fuel. The plaintiff denied all contemplation of any contractual relationship whatsoever.

The Court of Appeals, in affirming the judgment of the Common Pleas Court, held that the plaintiff was a guest within Ohio G. C. sec. 6308-6 which provides that no person may recover in an action brought against an auto driver for injuries sustained "while being transported without compensation therefor in the absence of wilful or wanton misconduct, and that consequently he could not maintain this action as there was not sufficient payment to take the case out of the operation of the statute. *Ernest* v. *Bellville*, 53 Ohio App. 110, 4 N.E. (2nd) 286 (1936).

The word "guest," in the automobile cases, has reference to a relationship connected with entertainment and hospitality, whereas "passenger" ordinarily involves a carriage for hire, and a resulting contractual element. Fundamental considerations in every such case are the amount of benefit bestowed on the driver and the circumstances attendant thereon.

If the carriage tends to promote a substantial mutual interest of each party, then, by the weight of authority, the case is taken out of the guest statute. *Latham* v. *Hankey*, 117 Conn. 5, 166 Atl. 400 (1933); *Hart* v. *Hogan*, 173 Wash. 598, 24 Pac. (2nd) 99 (1933). If the only benefits conferred are those incidental to companionship, there is no such mutual interest. *Shiels* v. *Audette*, 119 Conn. 75, 174 Atl. 323, 94 A.L.R. 1206 (1934); *Phillips* v. *Briggs*, 215 Iowa 261, 245 N.W. 720 (1932). Nor is the mere fact that the driver receives some collateral benefit from the carriage sufficient. *Leete* v. *Griswold Post No. 79, American Legion*, 114 Conn. 400, 158 Atl. 919 (1932); *Brothers* v. *Berg*, 214 Wis. 261, 254 N.W. 384 (1934). By way of illustration, a guest was denied recovery for injuries sustained in the course of a ride in a case where he accompanied the defendant only after considerable inducement on her part. *Snyder* v. *Milligan*, 53 Ohio App. 185, 4 N.E. (2nd) 399 (1936). Under facts somewhat more favorable to the plaintiff the guest was also denied relief when she was a car-occupant mainly for the purpose of serving as a guide to the driver.

Master v. *Horowitz*, 261 N.Y.S. 722, 237 App. Div. 237 (1932). But where the guest was invited by a defendant learning to drive because she had a driver's license, the court found the necessary mutual benefit present and allowed recovery. *Simons* v. *Towne*, 285 Mass. 96, 188 N.E. 605 (1934).

New Jersey, which has no guest statute, looks to the origin of the ride as a test for the rider's status. Thus he is held a guest when the invitation is requested, but a passenger when it is voluntary. *Paiewonsky* v. *Jaffe*, 101 N.J.L. 521, 129 Atl. 142 (1925). The practical effect of this view is to restrict the rule to the "hitch-hiker" cases. Under statute law generally the term has been much more broadly construed.

It has been said that if there is a common purpose in the journey, together with a contract by which gasoline is furnished in return for the transportation provided, then the arrangement itself affords the rider a basis for recovery. *Beer* v. *Beer*, 52 Ohio App. 276, 3 N.E. (2nd) 645 (1935). The case finds a possible explanation on the basis of a carriage for hire. Where such a carriage is found, statutes rather uniformly refuse to classify the party as a guest. The courts, however, are far from uniform in their interpretations of them, and a plaintiff is sometimes allowed recovery under a statute using the word "hire," while another plaintiff, on similar facts, is denied relief under a statute containing the word "compensation," a much broader term. *Davis* v. *Friederichs*, 9 La. App. 394, 120 So. 494 (1928); *Bookhart* v. *Greenlease Motors*, 215 Iowa 8, 244 N.W. 721, 82 A.L.R. 1359 (1932); *Crawford* v. *Foster*, 110 Cal. App. 21, 293 Pac. 841 (1930). An Ohio court has declared that compensation sufficient to take the case out of the statute may be made by consideration taking other forms than money. *Hallgren* v. *Wilson*, 18 Ohio Abs. 652 (1935); but that something substantial in the way of consideration was intended is shown by the attitude of the court in *Casper* v. *Higgins*, 54 Ohio App. 21 (1937). Here recovery was denied to a college student riding with an instructor who received part of his salary and expenses from a fund to which the boy had contributed several dollars. On the other hand, the host does receive such substantial consideration in the case of the demonstration ride provided for car buyers that the carriage is usually classified as one for hire. *Crawford* v. *Foster, supra; Bookhart* v. *Greenlease Motors, supra.*

That a mere gratuitous furnishing of gasoline is not enough to constitute hire is not seriously disputed. Courts look rather closely to the benefit conferred on the driver and, unless it is substantially equivalent to that received in return by the rider, they are reluctant to sustain a

case made out on the basis of mere negligence. It is quite unlikely that the rider could secure the same amount of transportation from a railroad, taxi, or bus company for the price represented by the gasoline purchase. Furthermore, it is doubtful, from a practical standpoint, that the purchase was intended as payment, and even if it were, it is even more doubtful that it was accepted as such. Both tender and acceptance are necessary for payment. *Haas* v. *Bates*, 150 Ore 592, 47 Pac. (2nd) 243 (1935). On this view of the situation there is substantial justification for the position taken in the principal case on the facts before the court.

A closer question is presented when a purchase of this kind is intended and received as payment. An Ohio Appellate Court has held that this constitutes sufficient consideration to take the case out of the statute. *Beer* v. *Beer, supra.* Yet in spite of the fact that a contract has been entered into, the act of the driver is influenced more by a spirit of hospitality than a desire for gain, and it would not be surprising if other courts in such a situation would treat the rider as a guest rather than a passenger for hire.

ROBIN W. LETT

LABOR LAW

THE STATUS OF THE STRIKE FOR A CLOSED SHOP*

A majority of plaintiff's driver salesmen, members of a Drivers' Union Local, after unsuccessfully requesting their employer to hire only union labor, went out on strike. The sole issue involved was the right to strike for a closed shop. Plaintiff asked the court for a permanent injunction against the strikers. Defendant conceded that all intimidation and violence should be enjoined but contended that the injunction should not extend to peaceful picketing.

Held, that all striking activities including peaceful picketing should be permanently enjoined. *Drake Bakeries, Inc.* v. *Bowles et al.*, 31 Ohio N.P. (N.S.) 425 (Ohio L. Rep. March 12, 1934).

* The following note was previously published in the *Ohio Bar* for May 7, 1934. A recheck by Jack Day indicates that the Ohio courts have not since that date passed upon this subject matter. While the invalidation of the N.I.R.A. has disposed of the principal case discussed in the note, the issue has taken on a new timeliness in inter-state industry in view of the similar wording in Sec. 7 of the National Labor Relations Act (29 U.S.C. 157) and the added provision in the same act expressly recognizing a closed shop agreement with labor organizations "not established, maintained, or assisted by any unfair labor practice." (29 U.S.C. 158(3)). Furthermore, the failure of passage in the recent Ohio Legislature of Am. H.B. 16, restricting jurisdiction for the issuance of injunctions in labor disputes, has left the question of the right to enjoin a strike for a closed shop in intra-state industry just as it was when this note was originally written.—Ed.